IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 302 OF 1994.

1. Manohar Sambu Jangam,
   Age: 54 years.
2. Sou.Indutai Manohar Jangam,
   Age: 44 years,
   both residents of Sakharale,
   Taluka Walva, Dist. Sangli. ... Appellants.

Versus.

1. Jeevandhar Shamgonda Chinchwade,
   AGe: 44, Driver-ST, Kurundwadi,
   Inam Dhamni.

2. Maharashtra State Road Transport
   Corporation, Kurundwadi Depot,
   Divisional Manager.

3. Jayprakash Mohanlal Sharma,
   deceased Saroj Jayprakash Sharma,
   resident of Vadgaon Peth, Taluka:
   Hatkanangale, Dist.Kolhapur.

4. United India Insurance Co.ltd.,
   Satara, Jeep MJM 1784. ... Respondents.

Shri A.G.Pawar for the Appellants.

Shri G.S.Hegde for the Respondent No.2.

Ms.Seema Sarnaik with Shri J.M.Patel for Respondent No.4.

CORAM : ABHAY S.OKA, J.

DATED : 27th April, 2007.

ORAL JUDGTMENT.:

1. Submissions of the learned Counsel appearing for the parties were herd on 7th March 2007. The Appeal is by the original Claimants in a Claim Petition under section 166 of the Motor Vehicles Act. Both the Appellants were injured in the accident. The accident

occurred on 5th June 1989 at 4.30 a.m. on Pune-Bangalore National Highway. A bus owned by the 2nd Respondent, the Maharashtra State Road Transport Corporation and a Mahindra Jeep owned by the 3rd Respondent were the vehicles involved in the accident. The 4th Respondent herein is the insurer of the jeep. The 1st Respondent was the driver of the bus involved in the accident. The jeep was travelling from Belgaum to Mumbai and the State Transport bus as proceeding from Mumbai to Karad. There was a collision between the bus and the jeep practically at the middle of the road. The Appellants are the husband and wife. The Appellants were travelling by the State Transport bus at the time of accident. Both the Appellants suffered injuries. Appellant No.1 claimed compensation of Rs.75,000/- and the Appellant No.2 claimed compensation of Rs.50,000/-. The learned Member of the Tribunal disposed of the claim petition along with the claim petitions of the other Claimants arising out of the same accident by a common judgment dated 17th July 1993. The learned Judge fixed the negligence on the part of the Driver of the bus to the extent of 70%. The learned Judge awarded the total compensation of Rs.33,000/- to the Appellants. The learned Judge awarded a sum of Rs.5500/- on account of expenses incurred by Appellant No.1 on treatment. On the same count the learned Judge awarded a sum of Rs.2500/- to the second Appellant. A sum of Rs.15,000/-

was awarded to the 1st Appellant by way of general damages and a sum of Rs.10,000/- to the 2nd Appellant on account of general damages.

2. The present Appeal is for enhancement in compensation. There is neither any Appeal nor cross objection preferred by any of the Respondents. Therefore, it is not necessary to consider the other aspects of the case regarding the finding of negligence and the only issue to be decided is whether the Appellants are entitled to enhancement in compensation. The learned Advocate appearing for the Appellants has taken me through the notes of evidence and the other material on record. He submitted that the compensation awarded by the learned Judge to both the Appellants under the different heads is on the lower side. The learned Counsel appearing for the 2nd and 4th Respondents supported the impugned Judgment and Award and submitted that the compensation of Rs.33,000/- awarded by the trial Court is just and reasonable and no interference was called for.

3. The first Appellant in his deposition described the manner in which the accident occurred. He stated that as a result of the injuries sustained in the accident, he became unconscious. He sustained bleeding injuries on his left forehead, above the chest, near

shoulder and he also suffered an injury to the spinal cord. He stated that he was hospitalised for a period of one month in Krishna Charitable Hospital at Karad. He stated that he was advised rest for two months and was further advised to use waist belt. He has stated that he had to take follow up treatment in the said hospital. He has stated that he was required to take treatment from Dr.Nerlekar and Dr.shah at Islampur. He produced a disability certificate issued by Dr.Sambhaji Shinde, the Medical Officer of the Cottage Hospital. In the medical certificate the said Doctor has opined that permanent disability suffered by the 1st Appellant was to the extent of 25%. The Appellant No.1 stated that he has 2-1/2 acres of bhagayat land and he was required to engage employees for looking after the land as a result of the injuries sustained by him. He stated that he had to undergo a surgery of spinal cord and though injuries have healed, he is constantly suffering from pain. He stated that due to the injuries to the forehead on the side of his left eye, the eye was adversely affected. He stated that he had incurred expenses of Rs.15,000/- on medical treatment. He produced certain bills on record of the Tribunal.

4. The second Appellant also stepped into the witness box and she deposed that she sustained fracture of the hip bone. She stated that she was also admitted

to Krishna Hospital at Karad and was hospitalised there. According to her, she has spent a sum of Rs.2500/- for medical treatment. According to her Dr.Shinde certified that she has suffered permanent disability to the extent of 6%.

5. The Appellants have also examined Dr.Sambhaji Shinde. Dr.Shinde has proved in evidence the disability certificates issued by him to the Appellants. He admitted that he had examined the Appellants on 26th August 1992. At that time the fracture injuries of both the Appellants had healed. He stated that he examined both of them clinically and perused the X-ray prints.

6. The learned Member of the Tribunal has discarded the disability certificates on the ground that though the Appellants suffered injuries on 5th June 1989 Dr.Shinde examined them three years thereafter. In view of the deposition of Dr.Shinde which is referred to above, in my view, the learned trial Judge was right in discarding the evidence of Dr.Shinde as Dr.Shinde had admitted that he had given opinion after perusing the case reports and after clinically examining both of them.

7. The learned Member of the Tribunal has awarded a sum of Rs.5,500/- on account of expenses incurred for

medical treatment of the 1st Appellant. The case of the 1st Appellant was that he has spent Rs.15,000/- on account of treatment. The learned trial Judge found that the Appellants had produced bills which justified grant of only a sum of Rs.5500/-. The first Appellant underwent a long hospitalisation. He had to undergo follow up treatment for a long time. It is not possible for any person to maintain each and every bill or receipt of the amount spent on a prolonged medical treatment. It is also difficult to keep an account of the amount spent on medicines. He was required to use waist belt for a considerably long time. The strict rules of evidence are not applicable to the proceedings before the Tribunal. The Tribunal has taken a conservative view of the expenditure incurred by the 1st Appellant. In my view, the trial Court ought to have granted a sum of Rs.10,000/- on account of medical expenses incurred by the 1st Appellant. In so far as the 2nd Appellant is concerned, she had claimed the expenditure of Rs.2500/- and the same has been granted by the Tribunal. The Second Appellant suffered fracture of hip bone. The 1st Appellant was granted a sum of Rs.15,000/- by way of general damages. The Second Appellant has also suffered a major fracture and she was also required to be hospitalised for one month. Therefore, the learned member of the Tribunal ought to have granted general damages of Rs.15,000/- to the 2nd

Appellant and there was no reason why only a sum of Rs.10,000/- has been granted. I find that no amount has been awarded on account of travelling expenses. A sum of Rs.500/- required to be awarded on that count. Thus the total compensation payable to the Appellants will be Rs.43,000/- instead of Rs.33,000/-. On the sum of Rs.33,000/- the learned Tribunal has granted interest at the rate of 12% per annum. Considering the reduction in rates of interest, the interest on the enhanced amount of Rs.10,000/- will be payable at the rate of 9% per annum from the date of filing of the claim petition till the date on which the amount is realised. The finding recorded by the Tribunal on issue No.3 is confirmed.

8. Accordingly the Appeal succeeds in part and the following order is passed:

i) Appeal is partly allowed.

ii) The compensation amount fixed by the Tribunal is enhanced to Rs.43,000/-. The Appellants will be also entitled to the proportionate costs of the Claim Application.

iii) However, on additional amount of Rs.10,000/- interest will be payable at

the rate of 9 percent per annum from the date of filing of the Claim Petition till the date of payment. The interest at the rate of 12 percent per annum granted on the amount awarded by the Tribunal is maintained.

iv) The Appellants will be entitled to proportionate costs of this Appeal from the Respondents Nos.2 to 4.

Judge.